

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

INTERFOOD HOLDING, B.V.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	No. 4:08-cv-00085 DJS
LARRY RICE,	)	
MICHAEL HUSMANN, and	)	
DF INGREDIENTS, INC.,	)	
	)	
Defendants.	)	

**PLAINTIFF’S MEMORANDUM IN OPPOSITION TO  
RICE’S MOTION FOR JUDGMENT ON THE PLEADINGS**

Plaintiff INTERFOOD HOLDING, B.V., (“Interfood”) hereby respectfully requests that the Court deny Defendant Larry Rice’s purported Motion for Judgment on the Pleadings (Doc. # 211). Mr. Rice’s motion provides no explanation or argument as to why he believes judgment is appropriate on the pleadings (i.e. the complaint and answer) in this case. Instead, Mr. Rice merely provides argument regarding his Rule 11 motion and argument in opposition to Interfood’s motion for reconsideration. Mr. Rice is not entitled to judgment on the pleadings.

“Judgment on the pleadings is appropriate only when there is no dispute as to any material facts and the moving party is entitled to judgment as a matter of law.” *Ginsburg v. Inbev NV/SA*, 649 F.Supp.2d 943, 946 (E.D. Mo. 2009). “Federal Rule of Civil Procedure 12(c) requires the court to ‘accept as true all factual allegations set out in the complaint’ and to ‘construe the complaint in the light most favorable to the plaintiff[s], drawing all inferences in [their] favor.’” *Id.* “When considering a motion for judgment on the pleadings, the court generally must ignore materials outside the pleadings, but it may consider some materials that are part of the public record or do not contradict the complaint, as well as materials that are

necessarily embraced by the pleadings.” *Id.* at 946-947.

Mr. Rice’s motion does not point to admissions in the complaint or otherwise explain how the complaint is deficient such that he is entitled to judgment as a matter of law. This motion (in addition to his Rule 11 motion and various other motions filed in this case) actually supports that there are disputes regarding material facts bearing on the remaining claims in this case. Indeed, Mr. Rice expressly states that “the Court now has sufficient *evidence* to know that the claims filed by Plaintiff . . . were frivolous claims.” Mot. for Judgment on the Pleadings [Doc. #211], p. 3, ¶9 (emphasis added). Mr. Rice’s reliance on “evidence” defeats his request for judgment on the pleadings.<sup>1</sup>

Interfood respectfully requests that this Court deny Mr. Rice’s Motion for Judgment on the Pleadings and grant such other and further relief as this Court deems just and proper.

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<sup>1</sup> Mr. Rice’s motion also discusses the Franklin County Circuit Court’s efforts to enforce the settlement between the parties. Mr. Rice has not yet complied with the settlement enforced by the Franklin County Circuit Court’s judgment. That settlement, however, calls for dismissal of lawsuits and mutual releases of all claims, which, upon compliance, will resolve this matter. The Franklin County Circuit Court issued an order requiring Mr. Rice to show cause as to why he should not be held in contempt as a result of his failure to comply with the judgment. A hearing was held pursuant to that order on February 11, 2010. The Franklin County Circuit Court has not yet issued a decision on the contempt issue.

RESPECTFULLY SUBMITTED,

BY: /s/ Jeffrey Schultz

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ATTORNEYS FOR PLAINTIFF –

COUNTERCLAIM DEFENDANT

INTERFOOD HOLDING, B.V.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document was filed electronically with the Clerk of the Court and served via operation of the Court's CM/ECF electronic filing system on this 19<sup>th</sup> day of February, 2010 to:

Joe D. Jacobson, Esq.  
Green Jacobson & Butsch, P.C.  
7733 Forsyth Boulevard, Suite 700  
Clayton, Missouri 63105  
jacobson@stlouislaw.com

The undersigned hereby certifies that a true and correct copy of the foregoing document was sent via first class mail, postage prepaid, and via facsimile on this 19<sup>th</sup> day of February, 2010 to:

Mr. Larry Rice  
127 Elm Street, Suite 201  
Washington, Missouri 63090  
Facsimile: 636-583-4877

/s/ Jeffrey L. Schultz